

Message Text

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C O N F I D E N T I A L SECTION 1 OF 4 GENEVA 3400

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: SUMMARY OF CLASSIFIED DELEGATION REPORT

FROM USDEL LOS

DEPT PLEASE PASS ALL DIPLOMATIC POSTS EXCEPT USMISSION GENEVA,
USDEL MTN GENEVA, USDEL SALT II GENEVA

1. SUMMARY OF DELEGATION REPORT:

THIS REPORT SUMMARIZES THE CLASSIFIED SECTION OF THE DELEGATION REPORT ON THE GENEVA SESSION OF THE LAW OF THE SEA CONFERENCE. A FULL REPORT AS WELL AS THE UNCLASSIFIED REPORT AND RELEVANT TEXTS WILL BE AIRPOUCHED. THIS REPORT ALSO CONTAINS A SECTION ON NEGOTIATING TRENDS AND GROUP POLITICS AT THE CONFERENCE. IT SUPPLEMENTS AND GENERALLY DOES NOT REPEAT MATERIAL IN THE UNCLASSIFIED REPORT.

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2. EVALUATION OF THE SESSION:

AS NOTED IN THE UNCLASSIFIED REPORT, THE SINGLE TEXT DOES NOT IN ANY FORMAL SENSE REPRESENT A NEGOTIATED OR CONSENSUS TEXT BUT IS INTENDED TO SERVE AS TAKE-OFF POINT FOR FUTURE NEGOTIATIONS. HOWEVER, TO THE CONSIDERABLE EXTENT THAT THE TEXT REFLECTS THE WORK OF THE EVENSEN GROUP ON THE ECONOMIC ZONE, THE UK-FIJI TEXT ON STRAITS AND CONSULTATIONS ON ARCHIPELAGOES, IT IS IN SUBSTANCE A TEXT RESULTING FROM NEGOTIATIONS BY STATES. WE HAVE NOT AS YET ANALYZED THE SUBSTANCE OF THE SINGLE TEXT AND THAT REPORT WILL BE FORTHCOMING LATER. IN ONE SENSE, IT DOES MEASURE THE TEMPERATURE OF THE CONFERENCE IN DIFFERENT COMMITTEES IN THAT THE COMMITTEE I TEXT ON BASIC CONDITIONS OF EXPLOITATION REPRESENTS A RETREAT TO IDEOLOGICAL CONCEPTS ON THE SYSTEM OF EXPLOITATION TO BE USED IN THE DEEP SEABED, WHILE THE COMMITTEE II TEXT DOES INCORPORATE A USEFUL PORTION OF THE WORK THAT WAS DONE ON THE ECONOMIC ZONE IN THE EVENSEN AND OTHER GROUPS. HOWEVER, NON-RESOURCE ISSUES IN COMMITTEE II ARE NOT LIKELY TO BE FINALLY RESOLVED WITHOUT PROGRESS ON THE DEEP SEABED NEGOTIATION. CONVERSELY, THE DEVELOPING COUNTRIES HAVE ALSO INDICATED THAT A SATISFACTORY RESOLUTION OF ECONOMIC ISSUES IN COMMITTEE II MIGHT HELP AMELIORATE THEIR RIGID POSITIONS IN COMMITTEE I. THE CONFERENCE IS CLEARLY AT THE TURNING POINT AND IT IS NOT NOW POSSIBLE TO PREDICT WHETHER AT THE NEXT SESSION THE NEGOTIATIONS WILL GO FORWARD OR WHETHER THE CONFERENCE WILL BOG DOWN ON A NUMBER OF POSSIBLE BREAKING POINTS. THE KEY QUESTION WILL BE WHETHER OR NOT GOVERNMENTS DECIDE THAT A TREATY IS SUFFICIENTLY IN THEIR INTEREST TO MAKE THE CONCESSIONS THAT CLEARLY MUST BE MADE TO DEAL WITH REALITIES. SOME OF THE FACTORS THAT WILL AFFECT THE DIRECTION OF NEGOTIATIONS AT THE NEXT SESSION INCLUDE:

A) EFFORTS TO MAINTAIN GROUP OF 77 UNITY: PARTICULARLY IN COMMITTEE I EARLY INDICATIONS OF POSSIBLE MOVEMENT TOWARD ACCOMMODATING THE INTERESTS OF DEVELOPED STATES WERE SQUELCHED BY SUCCESSFUL EFFORTS BY COME EXTREMISTS (ALGERIA AND TANZANIA) TO PLAY UPON UNCERTAINTIES OF SOME DEVELOPING STATES AND THEIR FEAR THAT, IF DIVIDED, THEIR INTERESTS WOULD BE IGNORED BY DEVELOPING STATES. THEY HAVE ALSO BEEN ABLE TO HOLD THE GROUP OF 77 TOGETHER BY POINTING TO THE DEEP DIVISION BETWEEN THE U.S. (AND OTHER WESTERN DEVELOPED COUNTRIES) AND THE SOVIET UNION ON FUNDAMENTAL EXPLOIT-
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ATION ISSUES.

B) TERRITORIALIZATION OF THE ECONOMIC ZONE: SUBSTANTIAL EFFORTS HAVE BEEN MADE BY COASTAL STATES BOTH IN THE EVENSEN GROUP AND WITHIN THE GROUP OF 77 TO INSURE MAXIMUM COASTAL STATE JURISDICTION IN THE ZONE. THIS EFFORT IS ABETTED BY A NUMBER OF LATIN STATES WHO CLAIM OR WOULD LIKE TO CLAIM 200-MILE TERRITORIAL SEAS. IT IS ALSO AIDED BY AN IDEOLOGICAL PERCEPTION OF THE ZONE ON THE

PART OF MANY DEVELOPING STATES AS A NECESSARY EXTENSION OF STATE SOVEREIGNTY ALBEIT WITH EXCEPTIONS SUCH AS NAVIGATIONAL RIGHTS. THESE STATES OPPOSE THE KIND OF BALANCE OF RIGHTS AND DUTIES THAT WOULD INITIALLY LIMIT COASTAL STATE RIGHTS. THIS PERCEPTION OF COASTAL STATE RIGHTS ALSO AFFECTS THE NEGOTIATION OF EXCEPTIONS FOR TUNA, THE ISSUES OF MARINE POLLUTION AND SCIENTIFIC RESEARCH, AND THE IMPORTANT QUESTION OF WHETHER THE WATERS WITHIN THE ZONE REMAIN HIGH SEAS.

C) LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES, SOME 48 STRONG, HAVE EFFECTIVELY OPERATED AS A BLOC TO INSIST ON THEIR DEMAND OF RIGHTS OF TRANSIT TO THE SEA THROUGH NEIGHBORING STATES AND THE RIGHT TO PARTICIPATE ON EQUAL BASIS IN FISHERIES RESOURCES OF COASTAL STATES. THEY HAVE ALSO DEMANDED PARTICIPATION IN MINERAL RESOURCES IN THE ECONOMIC ZONE BUT THIS IS PRESUMED TO BE A TACTICAL MANEUVER ONLY. THE GROUP HAS SERVED TO COMPLICATE ACCOMMODATION ON A BALANCE OF RIGHTS AND DUTIES IN THE ZONE BETWEEN COASTAL AND MARITIME INTERESTS. THE GROUP OF 77 DRAFT ON THE ECONOMIC ZONE, ALTHOUGH CONSIDERABLY MORE COASTALLY ORIENTED THAN EVENSEN DRAFT, TO MEET DEMANDS OF COASTAL LDC'S, WAS REJECTED BY LANDLOCKED GROUP WHICH CONSIDERED THAT RIGHTS OF ACCESS INCORPORATED IN BOTH TEXTS WERE INSUFFICIENT. IT IS CONCEIVABLE THAT IF THE MARITIME AND COASTAL STATES CANNOT COMPROMISE THEIR DIFFERENCES ON THEIR CONCEPT OF THE ZONE, THE LANDLOCKED GDS COULD USE THEIR VOTING POWER TO BLOC AN AGREEMENT BY OPPOSING A WORKABLE TEXT, OR BY SUPPORTING A TEXT UNACCEPTABLE TO A LARGE PERCENTAGE OF OTHER STATES.

D) STRAITS AND ARCHIPELAGOES: CONSIDERABLE PROGRESS WAS MADE IN PRIVATE DISCUSSION ON THE STRAITS ISSUE, WITH A NUMBER OF DECLARATIONS INDICATING FOR THE FIRST TIME THAT THEY WOULD ULTIMATELY SUPPORT A REGIME OF UNIMPEDED PASSAGE. RESOLUTION OF ARCHIPELAGO ISSUE REMAINS AN IMPORTANT FACTOR IN ACHIEVING THE NECESSARY AGREEMENT.

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MENT ON TRANSIT. ON THE ARCHIPELAGO ISSUE, WE HAVE ACHIEVED SUBSTANTIAL AGREEMENT WITH FIJI AND THE BAHAMAS, WHICH HAS IN TURN, ASSISTED IN DEVELOPING A MODERATE GROUP ON STRAITS AND ARCHIPELAGOES.

E) RELUCTANCE OF USSR AND OTHER EUROPEAN STATES TO ACCELERATE PACE OF PROGRESS: THE GROUP OF FIVE (U.S., UK, FRANCE, USSR, JAPAN) MET REGULARLY DURING THE CONFERENCE AND COORDINATED COMMENTS AND EFFORTS PARTICULARLY WITH RESPECT TO NEGOTIATION ON BASIC CONDITIONS DRAFT PAPER IN COMMITTEE I. IT IS APPARENT, HOWEVER, THAT ON DIFFERENT ISSUES FOR DIFFERENT REASONS A NUMBER OF EUROPEAN STATES, INCLUDING THE USSR AND FRANCE, PREFER THE PRESENT SLOW PACE OF PROGRESS. SOME EAST AND WESTERN EUROPEAN DISTANT WATER FISHING STATES, INCLUDING THE USSR, ARE RELUCTANT TO PUSH FOR AN AGREEMENT WHERE CONSENSUS CLEARLY FAVORS COASTAL STATE JURISDICTION

OVER FISHERIES WITHIN THE ECONOMIC ZONE. FRANCE AND THE FRG ARE NOTABLY CONSERVATIVE ON DEEP SEABED ISSUES AND IN FACT THE U.S. HAS BEEN MORE FORTHCOMING THAN THEY ARE IN SEEKING TO ACCOMMODATE DESIRES OF THE DEVELOPING STATES WITH RESPECT TO THE DEEP SEABED AUTHORITY. THE UK HAS ALSO TAKEN A SOMEWHAT CONSERVATIVE APPROACH, THOUGH NOT AS PRONOUNCED AS OTHERS, IN PART DUE TO INTERNAL POLITICAL PROBLEMS AND IN PART DUE TO INTEREST IN ENSURING JURISDICTION OVER THE MARGIN.

NOTE BY OC/T: NOT PASSED ABOVE ADDRESSEES.

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F) EXCEPTIONS FOR DISTANT WATER FISHERIES: DESPITE A VARIETY OF EFFORTS AND PROPOSALS, IT WAS NOT POSSIBLE TO REACH ANY KIND OF COMPROMISE ON THE HIGHLY MIGRATORY ISSUE THAT WOULD EXCEPT ALLOCATION FROM BOASTAL STATE JURISDICTION OR EVEN ACHIEVE A NEUTRAL FORMULA THAT WOULD PROTECT OUR OPTIONS IN A REGIONAL ORGANIZATION. ALSO, THE FULL UTILIZATION ARTICLE IN THE EVENSEN TEXT, ALTHOUGH GRANTING ACCESS RIGHTS TO FOREIGN FISHERIES IN THE ECONOMIC ZONE, PROVIDES FOR EXTENSIVE COASTAL STATE REGULATION OF SUCH ACCESS.

G) CONTINENTAL MARGIN: JURISTICATION OVER THE MARGIN WHERE IT EXTENDS BEYOND 200 MILES IS CLEARLY AN ESSENTIAL ELEMENT OF AGREEMENT FOR MOST OF THE IMPORTANT BROAD MARGIN STATES. HOWEVER, IT DOES APPEAR LIKELY THAT A COMPROMISE ACCEPTABLE TO OTHER STATES CAN BE REACHED WHICH WOULD COUPLE SUCH JURISDICTION WITH REVENUE SHARING BEYOND 200 MILES. DISCUSSION OF MEANS OF REVENUE SHARING WITHOUT IMPOSING AN UNACCEPTABLE FINANCIAL BURDEN WAS DISCUSSED IN THE LAST WEEKS WITH THE U.S. PROPOSING A SYSTEM OF PAYMENT OF PRODUCTION VALUE AT WELL HEAD WHICH WOULD NOT BE OPERATIVE FOR CONFIDENTIAL

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FIRST FIVE YEARS OF PRODUCTION, AND WOULD THEREAFTER INCREASE FROM ONE PERCENT IN SIXTH YEAR TO MAXIMUM OF FIVE PERCENT IN THE TENTH YEAR AND THEREAFTER. ALTHOUGH AGREEMENT WAS NOT REACHED ON CRITERIA FOR DELIMITATION OF MARGIN BEYOND 200 MILES, FORMULAS WERE DEvised WHICH APPEARED TO HAVE GOOD PROSPECTS FOR AGREEMENT AMONG BROAD MARGIN STATES.

H) IDEOLOGICAL CHARACTER OF DEEP SEABED NEGOTIATIONS:
THE MOST DIFFICULT PROBLEM AT THE CONFERENCE IS THE DEEP SEABED NEGOTIATION BECAUSE THE DEVELOPING COUNTRIES ARE NOW ACTIVELY SEEKING TO CREATE A NEW ECONOMIC ORDER WHICH INVOLVES A COMPLETE REAPPRAISAL OF THE USE OF THEIR COLLECTIVE POWER AS RAW MATERIALS PRODUCERS. THE DEEP SEABED IS THEIR FIRST GENUINE MULTILATERAL CONFERENCE OPPORTUNITY TO PUT INTO PRACTICE THEIR VERY STRONG FEELINGS ABOUT THE CONTROL AND DISPOSITION OF RAW MATERIALS. FAILURE TO OBTAIN A TREATY WOULD PRECLUDE PARTICIPATION AT LEAST IN FORESEEABLE FUTURE IN SEABED EXPLOITATION BY DEVELOPING COUNTRIES, AND THIS WILL PRESUMABLY BE A PART OF THE ASSESSMENT BY DEVELOPING COUNTRIES ON DESIRABILITY OF CONCLUDING AN AGREEMENT.

J) THE FOLLOWING SECTIONS SUMMARIZE THE WORK OF THE THREE MAIN COMMITTEES, AND OF THE DISPUTE SETTLEMENT WORKING GROUP.

3. COMMITTEE I: DEEP SEABEDS

PRIVATE CONSULTATIONS

A SIGNIFICANT PORTION OF COMMITTEE I'S WORK WAS CARRIED OUT IN PRIVATE CONSULTATIONS DURING THE GENEVA SESSION. A "SECRET" NEGOTIATING GROUP WAS FORMED UNDER THE CHAIRMANSHIP OF CHRISTOPHER PINTO (SRI LANKA) AT THE BEGINNING OF THE GENEVA SESSION. THE GROUP CONSISTED OF COMMITTEE I REPS. FROM SRI LANKA, ALGERIA, BRAZIL, INDIA, KENYA, PERU, SINGAPORE, TANZANIA, FRANCE, JAPAN, THE UNITED KINGDOM, THE UNION OF SOVIET SOCIALIST REPUBLICS, AND THE UNITED STATES. IN ADDITION TO THIS GROUP, THE UNITED STATES CONTINUED CONSULTATIONS AMONG THE GROUP OF FIVE AND ON SEVERAL OCCASIONS MET WITH THE EIGHT LDC MEMBERS OF THE NEGOTIATING GROUP. THE PRINCIPAL OBJECTIVE OF THE PRIVATE NEGOTIATING GROUP WAS TO ASSEMBLE THE COMMITTEE I "POLITICAL PACKAGE".

NEGOTIATING TRENDS
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A) TIMING: IN ADOPTING THE POSTURE THAT THE GENEVA SESSION SHOULD BE THE FINAL SUBSTANTIVE NEGOTIATING SESSION OF THE CONFERENCE, THE UNITED STATES DELEGATION WAS VIRTUALLY ISOLATED. WHILE THE MAJORITY OF THE GROUP OF 77 APPEARED TO ATTACH A NEW SENSE OF URGENCY TO THE COMMITTEE'S WORK, THERE WAS A GENERAL UNDERSTANDING FROM THE OUTSET THAT AT LEAST ONE MORE FULL NEGOTIATING SESSION WOULD BE SCHEDULED IN 1976. THE OTHER MEMBERS OF THE GROUP OF FIVE PRIVATELY ASCRIBED TO THIS UNDERSTANDING AND WERE UNWILLING TO MOVE QUICKLY TOWARDS COMPROMISE SOLUTIONS.

B) BASIC CONDITIONS: THE LEADERSHIP OF THE GROUP OF 77 WAS EXTREMELY RELUCTANT TO ACCEPT THE PINTO DRAFT BASIC CONDITIONS (WHICH WERE HIGHLY DISCRETIONARY) EVEN AS A BASIS FOR NEGOTIATION. THE REVISED VERSION OF THESE BASIC CONDITIONS, ISSUED AT THE END OF THE SESSION, IS CLOSER TO THE 77'S POSITION.

C) EXPLOITATION SYSTEM: THE PINTO DRAFT BASIC CONDITIONS OUTLINED A RESERVATION OF AREAS SYSTEM THAT WAS MORE CLEARLY ATTUNED TO THE USSR CONCEPT WHERE STATES ACQUIRE RIGHTS IN CERTAIN RESERVED AREAS, WHILE THE AUTHORITY HAS COMPLETE DISCRETION OVER EXPLOITATION IN THE REMAINDER OF THE SEABED. WHILE THE COMBINATION OF UNITED STATES AND USSR CONCEPTS PRODUCED AN UNWORKABLE SYSTEM, WE BELIEVE THAT THE 77 CLEARLY UNDERSTOOD THE DISTINCTION BETWEEN THE TWO APPROACHES. THUS, THEIR REJECTION OF THE RESERVATION OF AREAS CONCEPT APPEARS TO INDICATE A PARALLEL SYSTEM, AS PROPOSED BY THE SOVIETS, IS NONNEGOTIABLE. THIS CONCLUSION IS ALSO BASED ON A SERIES OF AD REFERENDUM EXPLORATORY DISCUSSIONS CONCERNING THE BANKING SYSTEM, BEGUN BY UNDER SECRETARY MAW DURING HIS VISIT TO GENEVA (REPORTED IN FULL-LENGTH CLASSIFIED REPORT). FOR STRONG IDEOLOGICAL REASONS, THE LDC'S CONTINUE TO INSIST ON DIRECT EXPLOITATION AS THE PRIMARY SYSTEM OF OPERATION, LARGELY INTERPRET DIRECT EXPLOITATION TO MEAN WHAT WE CALL "SERVICE CONTRACTS", BUT ARE UNWILLING TO DEFINE IT AS SUCH IN THE TREATY. FOR EXAMPLE, A PRIVATE INITIATIVE ON THE PART OF ONE LDC LEADER TO FORMULATE AN ARTICLE 9 THAT ESSENTIALLY DEFINED DIRECT EXPLOITATION AS SERVICE CONTRACTS AND PROVIDED FOR A GRADUAL PHASING OUT OF A JOINT VENTURE SYSTEM INTO SERVICE CONTRACTS WAS EFFECTIVELY KILLED BY OTHER LDC LEADERS.

D) PRODUCTION CONTROLS: THE POSITION OF THE LANDBASED PRODUCERS
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HAS SUBSTANTIALLY DECLINED WITHIN THE GROUP OF 77. PRIVATE CONSULTATIONS INDICATE THAT, WHILE IT MAY NOT BE POSSIBLE TO NEGOTIATE A CONVENTION THAT DOES NOT PROVIDE FOR PRODUCTION CONTROL POWERS IN THE AUTHORITY, MANY LDC CONSUMERS MAY SUPPORT VERY STRINGENT PROTECTIONS IN THE DECISION-MAKING PROCEDURES FOR USING THESE CONTROLS.

E) MACHINERY: EVEN BEFORE THE GENEVA SESSION, THE GROUP OF 77 HAD APPARENTLY AGREED TO COMPROMISE ON THE STRUCTURES AND POWERS OF THE COUNCIL. THEIR NEW PROPOSAL FOR A COUNCIL WITH RESERVED SEATS FOR BOTH DEVELOPED AND DEVELOPING COUNTRIES IS THOUGHT TO BE NEGOTIABLE FURTHER TOWARDS UNITED STATES DEMANDS. FOR THE ASSEMBLY, HOWEVER, THE LDC'S CONTINUE TO INSIST ON BROAD POLICY-MAKING POWERS WHICH CAN BASICALLY USURP THE JURISDICTION OF THE COUNCIL.

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F) SINGLE TEXTS: ALTHOUGH THE CHAIRMAN OF COMMITTEE I, PAUL

ENGO (CAMEROON) WAS OFFICIALLY CHARGED WITH PREPARING SINGLE TEXTS ON THE REGIME AND MACHINERY, PINTO WAS PRIVATELY REQUESTED TO PERFORM THIS TASK. THE REVISED PINTO DRAFT, HOWEVER, WAS ONLY PARTIALLY UTILIZED BY ENGO IN THE PREPARATION OF THE FINAL DRAFT THAT WAS SUBMITTED TO THE CONFERENCE AS THE COMMITTEE I SINGLE TEXTS. IN THE PREPARATION OF THE DRAFT REGIME AND MACHINERY ARTICLES, BOTH THE UNITED STATES AND OTHER MEMBERS OF THE GROUP OF FIVE, AND KEY LDC LEADERS WERE GIVEN OPPORTUNITIES TO COMMENT IN GREAT DETAIL ON PINTO'S CONCEPT OF WHERE THE BASIC COMPROMISES MIGHT BE FOUND. GIVEN THE POTENTIALLY IMPORTANT IMPLICATIONS OF THE PINTO DRAFT TREATY FOR FUTURE NEGOTIATIONS IN C-I, IT IS APPENDED TO THE FULL-LENGTH REPORT.

G) CONCLUSION:

AS A RESULT OF THE GENEVA SESSION, IT IS NOT POSSIBLE TO PERCEIVE THE GENERAL OUTLINES OF A TREATY THAT MIGHT BE ACCEPTABLE TO THE CONFIDENTIAL

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GROUP OF 77.

THE CRITICAL ISSUE CONTINUES TO BE WHETHER THE INTERNATIONAL AUTHORITY WILL BE REQUIRED TO PERMIT STATES AND THEIR NATIONALS TO EXPLOIT THE SEABED. THE GROUP OF 77 RETAIN THEIR STRONGLY FELT AVERSION TO SUCH A REQUIREMENT AND ARE OFFERING TO PAY FOR THEIR DEMANDS BY YIELDING TO THE INDUSTRIALIZED COUNTRIES' REQUIREMENTS FOR A CAREFULLY STRUCTURED INTERNATIONAL MACHINERY.

4. COMMITTEE II - TERRITORIAL SEA, STRAITS, ECONOMIC ZONE:

THE WORK ON COMMITTEE II ISSUES SHOULD BE EVALUATED ON THE BASIS OF THE FOLLOWING:

A) THE MAJOR ISSUE-- THE ECONOMIC ZONE""WAS CONSIDERED PRIMARILY BY THE EVENSEN GROUP, WHICH COMPLETED A COMPREHENSIVE SINGLE TEXT ON THE ZONE. OPEN DEBATE IN COMMITTEE II WAS ESSENTIALLY A HOLDING OPERATION, BUT WAS ALSO USED AS A VEHICLE FOR THINLY VEILED ATTACKS ON EVENSEN GROUP AS BEING NOT FULLY REPRESENTATIVE PARTICULARLY OF LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES.

B) OPEN-ENDED "INFORMAL CONSULTATIONS" WERE HELD FOR THE PURPOSE OF PROVIDING A FOUNDATION FOR THE CHAIRMAN'S SINGLE TEXT. THEY WERE NOT INTENDED TO BE NEGOTIATIONS.

C) SMALL INFORMAL CONSULTATIVE GROUPS HAVE BASICALLY COMPLETED SINGLE TEXTS ON A LARGE NUMBER OF IMPORTANT, BUT LESS CONTROVERSIAL ISSUES, E.G., BASELINES, INNOCENT PASSAGE IN THE TERRITORIAL SEA AND THE HIGH SEAS.

D) A PRIVATE NEGOTIATING GROUP ON STRAITS THAT INCLUDED ARAB

STATES AND OTHER DEVELOPING COUNTRIES, CHAIRED BY THE UK AND FIJI, HAS PRODUCED A SINGLE NEGOTIATING TEXT THAT ENDORSES UNIMPEDED PASSAGE AND WILL PRESUMABLY BE THE BASIS FOR FUTURE NEGOTIATION. POSITIVE ACHIEVEMENT OF U.S. OBJECTIVES INCLUDE THE FOLLOWING:

A) THE EVENSEN TEXT ON THE ECONOMIC ZONE CAME OUT FAIRLY WELL ON MOST ISSUES; FREEDOM OF NAVIGATION AND OVERFLIGHT ARE PROVIDED FOR; THE TEXT INCLUDES CONSERVATION AND FULL UTILIZATION PROVISIONS ON FISHERIES; SALMON CAME OUT WELL, AND WITHOUT A MAJOR FIGHT WITH JAPAN.

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B) THE UK-FIJI TEXT ON STRAITS IS A SOUND BASIS FOR NEGOTIATION.

C) OUR HARD CORE STRAITS OPPOSITION HAS BEEN REDUCED TO CHINA, ALBANIA, SPAIN, OMAN, YEMEN, DEMOCRATIC YEMEN, AND THE PHILIPPINES, WHILE SUPPORTERS OF THE UK-FIJI TEXT ARE GROWING, NOTABLY INCLUDING SOME ARABS, ARGENTINA, INDIA, KENYA, THE BAHAMAS, AND FIJI (RAPPORTEUR OF COMMITTEE II). INDONESIA AND MALAYSIA HAVE BEEN VIRTUALLY SILENT, AND MOROCCO LAUNCHED A COLONIALISM ATTACK ON SPAIN LINKED TO THE STRAITS ISSUE.

D) WE HAVE BEEN VERY SUCCESSFUL IN GETTING GOOD TEXTS ON IMPORTANT BUT LESS POLITICIZED ISSUES SUCH AS BASELINES.

E) THERE HAS BEEN NO PUBLIC DEBATE ON ARCHIPELAGOS WHILE PRIVATE NEGOTIATIONS CONTINUE.

NEGATIVE ASPECTS INCLUDE THE FOLLOWING:

A) THERE HAS BEEN NO FORMAL ADOPTION OF TEXTS OR AGREEMENT ON A COMMITTEE II PACKAGE, AND THE RISK OF UNILATERAL ACTION IS INCREASED.

B) THE GROUP OF 77 TEXT ON THE ECONOMIC ZONE CONTAINS VERY UNDESIRABLE ELEMENTS, AND IF PRESSED AT THE NEXT SESSION, COULD SEVERELY DAMAGE CHANCES OF AGREEMENT.

C) THERE IS VERY CONSIDERABLE OPPOSITION TO REGARDING THE ECONOMIC ZONE AS HIGH SEAS. TIME APPEARS TO BE ON THE SIDE OF THE TERRITORIALISTS.

D) THE LARGE GROUP OF LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES REMAIN FRUSTRATED, AND ISSUES OF CONCERN TO THEM HAVE NOT BEEN RESOLVED, THUS COMPLICATING ATTEMPTS TO REACH AGREEMENT.

E) NO CONSENSUS HAS YET EMERGED ON THE CONTINENTAL MARGIN BEYOND 200 MILES.

IT IS NOT POSSIBLE TO PREDICT WHAT WILL HAPPEN IN COMMITTEE II
AT THE NEXT SESSION. A POSITIVE SCENARIO MIGHT BE BASES ON THE
FOLLOWING:
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A) THE TWO KEY TREATY ELEMENTS--THE ECONOMIC ZONE AND STRAITS--
ARE VIRTUALLY COMPLETE IF THE EVENSEN TEXT ON THE ECONOMIC ZONE
AND THE UK-FIJI TEXT ON STRAITS REMAIN ESSENTIALLY THE BASIS OF
NEGOTIATION. MOST TECHNICAL ARTICLES ARE COMPLETED.

B) OUR ARCHIPELAGO NEGOTIATIONS WITH INDONESIA WILL BE SUCCESS-
FULLY CONCLUDED--A KEY ASPECT OF THE STRAITS STRATEGY.

C) AUSTRALIA AND ARGENTINA ON THE ONE HAND, AND THE LANDLOCKED
STATES ON THE OTHER, WILL NOT BLOCK AN OVERALL PACKAGE THAT INCLUDES
A COMPROMISE COUPLING JURISDICTION OVER THE MARGIN BEYOND 200 MILES
WITH REVENUE SHARING BEYOND 200 MILES.

D) THE EXTREME STRAITS STATES AND TERRITORIALISTS WILL REMAIN
SMALL IN NUMBER AND WILL BE DISREGARDED.

E) THE LANDLOCKED, PARTICULARLY THE GEOGRAPHICALLY DISADVANTAGED
STATES, WILL COMPROMISE ON ACCESS TO FISHERIES IN THE ECONOMIC
ZONE.

A NEGATIVE COMMITTEE II SCENARIO MIGHT BE BASED ON THE FOLLOWING:

A) THE LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES DECIDE
THAT THEY WILL NOT GET ADEQUATE RIGHTS, AND THUS SEE LITTLE POINT
IN "RECOGNIZING" THE ECONOMIC ZONE AND THUS OPPOSE A TREATY.

B) THE TERRITORIALISTS ADOPT AND SUCCEED IN A TACTIC OF
APPEALING FOR GROUP OF 77 SOLIDARITY IN AN EFFORT TO UNDERMINE
THE EVENSEN, OR SINGLE NEGOTIATING TEXT AS A BASIS FOR NEGOTIATION.
POLITICAL EVENTS IN THE UN OR OTHER CONFERENCES COULD FURTHER
ENCOURAGE EXTREME GROUP OF 77 BEHAVIOR.

E) UNILATERAL CLAIMS IN THE INTERIM WILL (I) HAVE REDUCED THE
MAJOR PRESSURE ON RESPONSIBLE STATES FOR ACHIEVING AGREEMENT,
NAMELY TO ACHIEVE FISHERIES JURISDICTION, AND (II) BE SO EXTREME
IN SOME CASES (E.G. A 200-MILE TERRITORIAL SEA) AS TO PRECLUDE
COMPROMISE WITH THE UNITED STATES.

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F) THE DISTANT WATER FISHING STATES ACQUIESCE IN FACT IN UNILATERAL FISHERIES CLAIMS, AND THE MARITIME EATES ACQUIESCE IN FACT (AVOID THE ISSUE) IN UNILATERAL CLAIMS OF CONTROL OVER NAVIGATION (E.G. TERRITORIAL SEA OR "POLLUTION") CONVINCING THE MAJORITY OF THE COASTAL STATES THAT AGREEMENT IS NOT NECESSARY TO ACHIEVE THEIR COASTAL OBJECTIVES.

G) THERE IS INSUFFICIENT TIME TO WRAP UP ALL THE ISSUES NECESSARY FOR INCLUSION IN THE PACKAGE.

5. COMMITTEE III-MARINE POLLUTION AND SCIENTIFIC RESEARCH

A) MARINE POLLUTION: IN GENERAL, NEGOTIATIONS ON NON-VESSEL ISSUES WENT WELL WITH MEANINGFUL ENVIRONMENTAL PROTECTION OBLIGATIONS EMERGING ON SEVERAL QUESTIONS. MAJOR PROBLEMS ARE CONTINUING SUPPORT FOR A DOUBLE STANDARD ALLOWING LESS STRINGENT STANDARDS FOR LDC'S AND OPPOSITION TO EFFECTIVE OBLIGATIONS.

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TIONS IN DUMPING AND CONTINENTAL SHELF POLLUTION FROM

SOME LDC'S, NOTABLY INDIA AND BRAZIL. OTHER LDC'S LED BY MEXICO, ARE MORE MODERATE AND SEEM WILLING TO COMPROMISE ON THESE QUESTIONS. ON VESSEL SOURCE POLLUTION BEYOND TERRITORIAL SEA, THERE SEEMS TO BE CONSIDERABLE WILLINGNESS TO AGREE ON A COMPROMISE BASED ON ENFORCEMENT RIGHTS ONLY, ALTHOUGH SOME LDC'S CONTINUE TO SUPPORT COASTAL STATE DESIRE FOR ENFORCEMENT RIGHTS IN ENTIRE 200-MILE ZONE AND MARITIME STATES ATTEMPT TO LIMIT SEVERELY PORT STATE ENFORCEMENT RIGHTS. MANY LDC'S PRIVATELY INDICATED WILLINGNESS TO SUPPORT UNRESTRICTED PORT STATE ENFORCEMENT OF INTERNATIONAL DISCHARGE STANDARDS AS PART OF AN OVERALL ENFORCEMENT SYSTEM.

B) SCIENTIFIC MARINE RESEARCH: ALTHOUGH GREAT DIFFICULTIES OBVIOUSLY EXIST IN DISTINGUISHING BETWEEN RESOURCE AND NON-RESOURCE RELATED RESEARCH, IT APPEARS THAT FUTURE NEGOTIATIONS WILL CENTER UPON THIS DISTINCTION. MAJOR EFFORTS WILL HAVE TO BE MADE TO NARROW THE SCOPE OF RESOURCE-RELATED RESEARCH. A PROPER PROCEDURAL APPROACH WOULD ALSO APPEAR NECESSARY WHERE RESEARCHING STATES CAN SEEK TO OPERATE UNDER AN OBLIGATION REGIME UNLESS THE COASTAL STATE TAKES AFFIRMATIVE ACTION TO REPLACE IT UNDER A CONSENT REGIME. FROM AN OVERALL PERSPECTIVE, A REGIME WHICH MAKES A DISTINCTION BETWEEN KINDS OF RESEARCH BASED UPON WHETHER IT IS RELATED TO RESOURCES, CAN BE SEEN AS A FURTHER DEFINITION OF THE NATURE OF COASTAL STATE JURISDICTION IN THE ECONOMIC ZONE.

6. SETTLEMENT OF DISPUTES

AS A RESULT OF THE WORK OF THIS SESSION, IT NOW APPEARS THAT WE HAVE A GOOD CHANCE TO OBTAIN AGREEMENT ON BINDING DISPUTE SETTLEMENT IN THE CONVENTION FOR BOTH THE DEEP SEABED AND AT LEAST FOR CERTAIN QUESTIONS (E.G., NAVIGATION) IN AREAS UNDER NATIONAL JURISDICTION. LATIN AND CANADIAN PRESSURE, HOWEVER, WILL PROBABLY NECESSITATE AN ACCOMMODATION IN AREAS UNDER NATION JURISDICTION TO PROTECT COASTAL STATE REGULATORY DISCRETION WITH RESPECT TO RESOURCES.

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THERE WAS STRONG OPPOSITION TO THE CONCEPT OF THE LOS TRIBUNAL BY THE LATINS, SOVIETS, AND JAPAN, AMONG OTHERS. ON THE OTHER HAND, SOME AFRICAN DELEGATES TELL US THAT THE INCLUSION OF THE TRIBUNAL IN THE PROPOSAL FORWARDED TO THE PRESIDENT MAY HELP TO DEVELOP THE REQUISITE LDC SUPPORT FOR COMPULSORY DISPUTE SETTLEMENT. ABRAMS

NOTE BY OC/T: NOT PASSED ABOVE ADDRESSEES.

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